

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14

LANDMARK OF FLORISSANT, INC., d/b/a  
LANDMARK CHRYSLER-JEEP

Employer <sup>1</sup>

and

Case 14-RC-12434

AUTOMOTIVE, PETROLEUM & ALLIED  
INDUSTRIES EMPLOYEES UNION, LOCAL  
618, affiliated with INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

**REGIONAL DIRECTOR'S DECISION AND**  
**DIRECTION OF ELECTION**

The Employer, Landmark of Florissant, Inc., d/b/a Landmark Chrysler-Jeep, sells automobiles and provides repair services and body shop work at its dealership located in Florissant, Missouri. The Petitioner, Automotive, Petroleum & Allied Industries Employees Union, Local 618, affiliated with International Brotherhood of Teamsters, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time employees in the cashier service department, biller accounting department, accounting department, payroll, warranty clerks, receptionists, administrative assistants, body shop assistants, and inventory

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<sup>1</sup> The Employer's name appears as amended at hearing.

and control clerks employed by the Employer at its Florissant, Missouri dealership.<sup>2</sup> A hearing officer of the Board held a hearing on April 11, 2003 and the briefs were due on April 18, 2003.<sup>3</sup>

The Employer contrary to the Petitioner contends: 1) that the petitioned-for unit is inappropriate where the Employer has a history of multi-employer bargaining for other categories of employees; 2) that the payroll administrator is a confidential employee who should be excluded from the unit; and 3) that two laid off employees are ineligible to vote because they have no reasonable expectancy of recall in the near future. I have considered the evidence and the arguments presented by the parties on these issues. As discussed below, I have concluded that the petitioned-for single-employer unit is appropriate. I further find that the payroll administrator is not a confidential employee and should be included in the unit, and the two laid off employees should be allowed to vote subject to the challenge procedures. Accordingly, I have directed an election in the petitioned-for unit, which currently consists of 10 employees.

## **I. OVERVIEW OF OPERATIONS**

The Employer's dealership consists of a 7 acre complex with the sales department at the front of the complex, and the service and parts departments in an attached building to the back of the complex. The body shop sits further back on the property. Across the street from the main complex is a leased building housing administration personnel. The Employer's

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<sup>2</sup> The Petitioner refers to "administrative assistants" in its petition. The record refers to one administrative assistant who works in the body shop. However, the classification of administrative assistant is not listed on Employer Exhibit 1 which contains the names and job classifications of the employees currently working in the petitioned-for unit. I shall therefore not include the classification of administrative assistant in the unit found appropriate here. The petition also refers to classifications and departments which are inconsistent with those used by the Employer. For the sake of clarity, I will use the job classifications set forth in Employer Exhibit 1 when referring to the classifications in the petitioned-for unit.

<sup>3</sup> The Employer's brief was received in the Regional Office on April 21, 2003. On April 23, 2003, the Employer filed a Motion for Leave to File Brief Out of Time. The Board has strictly enforced the rules for timely service of documents. *Goody's Family Clothing*, 308 NLRB 181 (1992). Accordingly, the Employer's motion is denied.

employees are under the overall supervision of the general manager, which position is currently vacant. The Employer currently employs 10 office clerical employees, and had 2 additional clericals who were recently laid off, whose status is at issue. Seven of the office clericals in the petitioned-for unit work in the administration department, two work in the service department, and one works in the body shop. The two laid off employees at issue both worked in the service department. All the clerical employees are paid hourly.

The Employer is a member of the St. Louis Auto Dealers Association (Association), a multi-employer bargaining group. The employees who perform service and repair work in the service department, and the employees who perform body shop work, are represented by District 9 of the Machinists Union, Local 777, and are covered under a multi-employer collective-bargaining agreement between the Association and the Machinists Union. The Employer's parts department employees are already represented by the Petitioner and are also covered under a separate multi-employer collective-bargaining agreement between the Association and the Petitioner. There is no history of bargaining with respect to the Employer's office clerical employees, nor is there any evidence of a bargaining history with respect to the office clericals or the other members of the Association.

The seven clericals in the administration department report to the office manager, Sherry Cohen. One of these clericals is an inventory control clerk responsible for verifying receipt of new vehicles delivered to the dealership, executing appropriate purchase orders, handling all paperwork involving trades with other dealerships, and maintaining control of the inventory of vehicles. Two of the clericals in administration are receptionists, one who works full-time and one who is part-time. These two receptionists physically work in the sales department answering and routing incoming calls, taking messages, and providing basic information to callers. The two billing clerks in administration check contracts on vehicles that have been sold by the salesmen to ensure the accuracy of the information contained in the contract, and then submit the contracts to the bank for reimbursement. The billing clerks also handle title work,

compute salespersons' commissions, and make payoffs to dealerships for trades and to vehicle manufacturers. The accounts receivable clerk is responsible for the disbursement of payment checks, the reconciliation of accounts receivable records, collection of non-sufficient funds and stop payment checks, informing managers of delinquent accounts, and establishing new accounts. The payroll administrator, whose duties will be discussed in more detail below, is responsible for the administration of dealership compensation and benefits programs.

There are two clerical employees currently working in the service department, one cashier and one warranty administrator, both of whom report to the service department manager, Denny Weyermeier. The employee classified as a "cashier" in Employer Exhibit 1 is also referred to as a "cashier/customer service/service receptionist" employee on the record by General Sales Manager Gililand. Her duties include handling incoming calls for the service department and accepting and recording payments from customers and employees for goods and services. The other clerical, the warranty administrator, works in the cashier's office in the service department. Her duties include preparing, recording, and reconciling warranty claims, and submitting warranty claims to the factory or distributor for payment.

The two laid off employees whose status is in dispute both worked in the service department. General Sales Manager Gililand refers to these two employees both as "cashiers" and as "receptionist/customer service/cashiers". One of the laid off employees, Patricia Jones, worked part-time and was responsible for receiving payments for services performed by the department and coordinating the repair orders with the payments received. She also performed duties as a service receptionist answering in-coming service department calls. The other laid off employee, Cathy Badalamenti, performed the same duties as Jones but on a full-time basis. The duties of both Jones and Badalamenti are now being shared by the cashier and the warranty administrator who are currently working in the service department.

There is one clerical employee working in the body shop and she is classified as a body shop clerk. She reports to the Body Shop Manager Brad Appel. Her duties include preparing,

recording and reconciling all body shop orders, submitting claims to insurance companies, and following up to ensure timely payment on all claims.

## **II. APPROPRIATENESS OF SINGLE-EMPLOYER UNIT**

The Employer contends the requested unit is inappropriate because it is not a multi-employer unit. The Employer argues the requested unit is “residual” to the two multi-employer bargaining units, the parts department unit represented separately by the Petitioner, and the service and body shop unit represented by the Machinists. The Employer cites *The Los Angeles Statler Hilton Hotel*, 129 NLRB 1349 (1961), in which the Board found that units residual to multi-employer units must be coextensive in scope with the bargaining unit, and therefore must include all the unrepresented employees of the other employers in the multi-employer group. I find, however, that the petitioned-for unit is not a residual unit of miscellaneous unrepresented employees but a separately distinct business office clerical unit which does not have to be coextensive with the Employer’s other multi-employer bargaining units.

The petitioned-for unit includes classifications traditionally included in business office clerical units. The job descriptions for these positions, as well as the record testimony, reflect these individuals all perform clerical duties, including filing, answering telephones, and preparing various paperwork involved in the sale and servicing of automobiles. General Sales Manager Gililand admitted that the employees in the petitioned-for unit listed on Employer Exhibit 1 are, “for the most part”, clerical employees. The only position the Employer disputes on the record as not being clerical is the payroll administrator whom the Employer contends is a confidential employee. The Employer does not argue that the employees in the petitioned-for unit lack a community of interest or are not a homogenous, separately identifiable group of employees, nor has the Employer established that the petitioned-for employees are the only remaining unrepresented employees as the record does not reflect that the salesmen are currently represented. As previously noted, there is no history of bargaining with respect to the

office clerical employees. The Board has held that multi-employer bargaining as to certain categories of employees does not preclude the establishment of a single-employer unit of unrepresented employees in a different category who have no history of bargaining. *Sovereign Productions, Inc.*, 107 NLRB 359 (1953); *Fiberboard Products, Inc., San Joaquin Division*, 102 NLRB 405 (1953); and *Lownsbury Chevrolet Co.*, 101 NLRB 1752 (1952). Accordingly, I find the requested single-employer unit of office clerical employees is appropriate. *Sovereign Productions, Inc.*, supra; *Fiberboard Products, Inc., San Joaquin Division*, supra.

### **III. STATUS OF PAYROLL ADMINISTRATOR**

The Employer contends, contrary to the Petitioner, that the payroll administrator is a confidential employee and should be excluded from the unit primarily because she has access to wage and benefit data on employees, including those in the petitioned-for unit. The Board defines the term “confidential” very narrowly and will only exclude an employee as confidential if that employee assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations, or who have access to confidential information regarding anticipated changes that may result from collective-bargaining negotiations. *S.S. Joachim and Anne Residence*, 314 NLRB 1191, 1195-1196 (1994). The party asserting confidential status has the burden of proving such status. *S.S. Joachim and Anne Residence*, supra. I find the Employer has not met its burden.

The record reflects the payroll administrator prepares payroll checks for all employees and ensures employees are properly compensated according to law, dealership policy, and the union contract for the represented employees. The payroll administrator collects and calculates all time cards, deducts and remits union dues, and tracks employees’ sick leave, except for FMLA leave which is handled by the human resources manager at the headquarters for all the Landmark dealerships located in Springfield, Illinois. The payroll administrator also ensures employees receive the proper benefits, including holiday pay and contractual tool allowances. Employees’ vacation is automatically tracked by the Employer’s computerized payroll system.

The payroll administrator calculates the 401(k) contributions of the unionized employees, while the 401(k) contributions for the administrative staff and supervisors are handled by the Employer's human resource manager in Springfield. There is no evidence the payroll administrator has access to budget or cost estimates. Access to payroll information, including wage and benefit information for all employees, even management, does not make an employee a confidential employee. *S.S. Joachim and Anne Residence*, supra at 1195-1196.

The payroll administrator also has access to employees' personnel files. The payroll administrator maintains a copy of employees' personnel files, and another set of personnel files is maintained by the human resource manager in the Springfield office. The payroll administrator places copies of disciplinary actions in these files and forwards copies to the Springfield office. The respective unions are also provided with copies of any discipline issued to represented employees. The payroll administrator does not participate or sit in on any disciplinary proceeding, nor does she participate in grievance proceedings. In one instance, the payroll administrator did provide information on an employee's hours to a supervisor for use in determining whether the employee was entitled to overtime pay. Providing personnel or statistical information for use in determining payroll claims or for use in grievance handling is not sufficient to bring an employee within the meaning of a confidential employee. *Inland Steel Co.*, 308 NLRB 868, 877 (1992). Having access to, and/or maintaining, personnel files also does not make an employee a confidential employee. *PTI Communications*, 308 NLRB 918, 921 (1992). While the payroll administrator also has access to medical information contained on employees' insurance forms, access to such information does not make the payroll administrator a confidential employee. *Inland Steel Co.*, supra at 872.

The payroll administrator does not attend management meetings, nor does she participate in contract negotiations. She did attend two meetings conducted by representatives of the Association, along with payroll administrators from other member dealerships. The purpose of one meeting, held 2 to 3 years ago, was to obtain information on employees' 401(k)

contributions in an effort to correct any mistakes in the administration of the 401(k) plan. The payroll administrator provided a spreadsheet listing all the 401(k) contributions for the employees at the Florissant dealership. The purpose of the other meeting, held in February 2002, was to familiarize the payroll administrators with the changes in the recently negotiated contracts. There is no evidence the payroll administrators were asked to interpret contractual provisions or to provide information for any future contract negotiations at either of these meetings. Compiling statistical data on benefits does not make an employee a confidential employee, nor does attendance at meetings where employees are instructed as to the meaning and the Employer's interpretation of a new union contract. See *S.S. Joachim and Anne Residence*, supra, at 1196; *Chrysler Corp.*, 173 NLRB 1046, 1048 (1968).

The Employer has failed to establish that the payroll administrator assists or acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. There is no evidence that Office Manager Cohen, to whom the payroll administrator reports, formulates, determines, and effectuates management policies in the field of labor relations. Cohen was not involved in the contract negotiations involving the represented employees. Further, even if Cohen were involved in labor relations matters, the payroll administrator has not been designated as Cohen's personal secretary nor is there any evidence the payroll administrator acts in any other confidential capacity with respect to Cohen. With regard to contract negotiations, the payroll administrator does not participate in contract negotiations nor is there evidence that she has access to the precise terms to which the Employer would agree in a collective-bargaining agreement. There is no evidence the payroll administrator has the authority to interpret the contracts or make policy decisions. Accordingly, I find the payroll administrator is not a confidential employee and I shall include her in the unit found appropriate here.

#### **IV. STATUS OF LAID OFF EMPLOYEES**



The Petitioner, contrary to the Employer, contends that the two laid off clerical employees should be included in the petitioned-for unit. The voting eligibility of laid off employees depends on whether objective evidence establishes the employees had a reasonable expectancy of recall in the near future. *Osram Sylvania, Inc.*, 325 NLRB 758, 760 (1998). The factors used by the Board to determine whether a reasonable expectancy of recall exists include the employer's past experience with layoffs and its future plans, the circumstances surrounding the layoff, and what the employees were told about the likelihood of recall. *Id.* I conclude the record evidence is insufficient to determine the eligibility of the two laid off employees.

The Employer's sole witness, General Sales Manager Gililand, testified that cashier/customer service/receptionists Patricia Jones and Cathy Badalamenti were laid off sometime between March 28 and April 2, 2003, though he was not certain if they were laid off together or on different days. Gililand testified the decision to lay off employees, and the selection of employees for lay off, was not made by him, but by the service department manager in conjunction with higher management. Gililand did not know, nor does the record reflect, what the two laid off employees were told about the reason for the layoff, or what they were told about the likelihood of recall. Gililand testified that he could not state whether the layoff would be permanent or temporary. The record reflects employee Jones was laid off previously within the last 9 months for an undisclosed period of time due to a down turn in business. The record does not disclose any other information regarding this prior layoff. The record does not reflect that Badalamenti has ever been previously laid off. There is no evidence on whether the Employer has an established layoff or recall policy, nor is there any evidence as to what the Employer's specific future plans are with respect to the layoffs of these two employees. Accordingly, I am unable to make a determination on the eligibility of the two laid off employees, so I will permit them to vote pursuant to the Board's challenged ballot procedure.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.<sup>4</sup>

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time cashiers, billing clerks, accounts receivable clerks, payroll administrators, warranty administrators, receptionists, inventory control clerks, and body shop clerks, employed by the Employer at its St. Louis, Missouri facility<sup>5</sup> EXCLUDING professional employees, guards and supervisors<sup>6</sup> as defined in the Act, and all other employees.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they

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<sup>4</sup> The parties stipulated that the Employer, a Missouri corporation, with its principal offices and a dealership located in Florissant, Missouri, is engaged in the resale, sale, and service of new and used motor vehicles. During the last 12 months, which period is representative of the Employer's operations, the Employer derived gross revenues in excess of \$500,000 and purchased and received at its Florissant, Missouri facility goods valued in excess of \$50,000 directly from points located outside the State of Missouri. The parties further stipulated that the Employer is engaged in commerce within the meaning of the Act.

<sup>5</sup> As noted above, laid off employees Patricia Jones and Cathy Badalamenti may vote subject to the challenge procedures.

<sup>6</sup> The parties stipulated the following individuals are supervisors under Section 2(11) of the Act and should be excluded from the unit: Service Department Manager Denny Weyermeier, Body Shop

wish to be represented for purposes of collective bargaining by Automotive, Petroleum & Allied Industries Employees Union, Local 618, affiliated with International Brotherhood of Teamsters, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

#### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

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Manager Brad Appel, and Parts Department Manager Dennis Unnerstall. Accordingly, and in agreement with the parties, I shall exclude these individuals from the unit.

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103, on or before **May 2, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (314) 539-7794. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **May 9, 2003**. The request may **not** be filed by facsimile.

Dated November 12, 2003  
at Saint Louis, Missouri

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Ralph R. Tremain, Regional Director, Region 14  
National Labor Relations Board

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